

# Authority of County Board of Equalization to Equalize the Assessment of Property

AGO 1992 No. 14 - Jul 15 1992

Attorney General Ken Eikenberry

## TAXATION--PROPERTY--COUNTIES--BOARD OF EQUALIZATION--Authority of County Board of Equalization to Equalize the Assessment of Property.

1. RCW 84.48.010 authorizes the county board of equalization to equalize the assessment of the property in the county. The board has the authority to equalize property on the assessment role on its own motion, even if the property has not been revalued in the current year.
2. If the board of equalization equalizes the value of property on the assessment role, that was not revalued during the current year, the board must measure the value of that property against the fair market value in the assessor's revaluation year in which the property was valued.

\* \* \* \* \*

July 15, 1992

Honorable Michael J. Sullivan  
 Pacific County Prosecuting Attorney  
 Post Office Box 45  
 South Bend, Washington 98586

Cite as: AGO 1992 No. 14

Dear Mr. Sullivan:

By letter previously acknowledged, you requested our opinion on several questions which we paraphrase as follows:

1. Does RCW 84.48.010 authorize the board of equalization to equalize property on its own motion in a year in which that property has not been revalued by the county assessor?
2. If the answer to Question 1 is yes, then must the board of equalization equalize property values to the current year's fair market value or to the fair market value of the assessor's revaluation year?
3. If the answer to Question 1 is no, must the board of equalization or a petitioner seek equalized property values as of the current year's fair market value or the fair market value as of the assessor's revaluation year?
4. Is it a constitutional violation of equal protection to allow one county to revalue property every four years and another county to revalue every year?

### BRIEF ANSWERS

The board of equalization does have statutory authority to equalize property on the assessment roll even if the property has not been revalued in the current year. However, in exercising this authority the board must measure the value against the fair market value in the assessor's revaluation year.

### BACKGROUND

The Washington property tax system lodges primary responsibility for the assessment of property with the county assessor. RCW 84.40.040 directs the assessor in the time and manner of valuing property within each county. It provides in part:

The assessor shall actually determine as nearly as practicable the true and fair value of each tract or lot of land listed for taxation and of each improvement located thereon and shall enter one hundred percent of the value of such land and of the total value of such improvements, together with the total of such one hundred percent valuations, opposite each description of property on the assessment list and tax roll.

RCW 84.40.020 subjects all real property in the state to taxation and directs that it be listed and assessed every year with reference to its value on the first day of January.[1] If unlimited resources and staffing were available, annual physical inspection and revaluation of every piece of property within a county would be possible. For most counties in Washington, however, that has never been a reality. In fact, the practical constraints on assessors' abilities to perform annual appraisals or revaluations of property have been recognized both in statute and appellate decisions. RCW 84.41.030 authorizes periodic county revaluation programs:

Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county at least once each four years and physical inspection of all taxable real property within the county at least once each six years.

This statutorily authorized method of periodic revaluation is commonly referred to as "cyclical revaluation".

Cyclical revaluation has been specifically examined and approved by the Washington Supreme Court. In Carkonen v. Williams, 76 Wn.2d 617, 458 P.2d 280 (1969), the court rejected an equal protection and uniformity challenges to the cyclical revaluation process. In upholding the cyclical process the court observed:

In keeping with the import of the Sunday Lake [247 U.S. 350, 62 L. Ed. 1154, 38 S. Ct. 495 (1918)] decision, state courts which have considered cyclical revaluation programs have generally found them to be compatible with constitutional equal protection and uniformity provisions, provided they be carried out systematically and without intentional discrimination.

Id. at 633.

The necessary elements for a valid cyclical revaluation process were further delineated in Dore v. Kinneer, 79 Wn.2d 755, 489 P.2d 898 (1971). In Dore, the Washington Supreme Court struck down the King County Assessor's valuations for the first year of a four-year cycle as a violation of the equal protection clauses of the state and federal constitutions and the uniformity provisions of the fourteenth amendment to the state constitution. The King County Assessor had revalued only six percent of the parcels within King county in the first year of a four-year cyclical process. The court contrasted this failure to approach the level of revaluation necessary to complete the process in a systematic four-year manner with the good faith efforts of the assessors in the Carkonen case. The court required, above all, that the process be systematic.

Thus, where a cyclical program of revaluation is undertaken, a systematic and consistent program of revaluation must be maintained during each year of the cyclical period in a county. This would require that substantially an equal amount of taxable property in a county be revalued each year of the cyclical program in order that all taxpayers receive the same treatment within the cyclical period to avoid derogation of the equal protection clauses of our federal and state constitutions and the uniformity of taxation clauses of our state constitution.

Dore, at 763.

The four-year cyclical process was again upheld in Sator v. Department of Rev., 89 Wn.2d 338, 344, 572 P.2d 1094 (1977):

We have repeatedly said that, if the 4-year revaluation program is conducted in an orderly manner and pursuant to a regular plan, and if it is not done in an arbitrary, capricious or intentionally discriminatory manner, then it does not violate the constitution nor does any incidental inequity which flows from it.

Many counties in Washington revalue real property on a four-year cycle. Some counties, however, have systems that allow them to revalue property on a shorter cycle.[2] These processes are supervised and approved by the Washington State Department of Revenue. RCW 84.41.041.

The property tax system also includes the county boards of equalization. The board of equalization's authority is set forth in RCW 84.48.010.[3] The board of equalization is charged with examining and comparing the returns of the assessment of property within the county and equalizing the same

so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, which is presumed to be correct pursuant to RCW 84.40.0301.

The board of equalization performs several functions including reviewing valuations, acting on petitions by taxpayers, and ruling on exemptions. The board is also authorized to review property values on its own motion. AGO 1986 No. 3[4] discusses the nature of the county board of equalization and its power to initiate review of property values. Decisions of the board of equalization are appealable to the State Board of Tax Appeals. RCW 84.08.130. The questions you have asked involve the relationship between the duties of the county assessor and those of the county board of equalization.

### ANALYSIS

#### Question 1:

Does RCW 84.48.010 authorize the board of equalization to equalize property on its own motion in a year in which that property has not been revalued by the county assessor?

This question raises two substantive points. One issue is whether the board of equalization has the power to equalize property on its own motion, rather than simply acting on the petitions of others. The second aspect involves whether this power, if it exists, would be modified if the property under consideration was within the area being revalued that year by the assessor in the course of his or her normal revaluation cycle.

The authority of the county board of equalization to equalize property on its own motion is set forth in RCW 84.48.010. The board is charged with examining and comparing the returns of the assessment of the property of the county and with equalizing the same to assure that property is entered on the assessment list at its true and fair value. This duty, however, is to equalize the property according to "the measure of value used by the county assessor in such assessment year, which is presumed to be correct". RCW 84.48.010. The requirement in RCW 84.48.010 to notify taxpayers before raising the valuation of their property demonstrates that this duty may be exercised without a taxpayer petition. If the board was limited to acting upon the petition of the taxpayer, there would be no necessity to notify the owner of the property before taking action.

The board of equalization's power to act upon its own motion to equalize property has also been recognized in AGO 1986 No. 3, which, in referring to the board's authority pursuant to RCW 84.48.010, stated: "Under this same statute they may also raise or reduce the valuation of real or personal property reflected on the assessors' lists upon their own motion." AGO 1986 No. 3, at 3.

The second portion of your question raises whether this statutory power of the board of equalization is diminished if the property in question was not part of the assessor's regular revaluation area for the assessment year. Each year the assessor certifies the assessment list with values as of January 1 of the year. RCW 84.40.020, .320. The board of equalization reviews that assessment list. Even if property has not been revalued by the assessor in a given year, it has still been assessed. Since the board of equalization is charged with reviewing the assessment list for purposes of equalizing it, the year in which properties have been revalued by the assessor should not reduce the board's authority to equalize property. The board, however, is restricted in exercising its authority by RCW 84.48.010 and other statutory and constitutional restraints.

Your letter suggests that the board of equalization's adjustment of property values would create an unconstitutional delegation of the elected assessor's authority to an entity other than the elected assessor or a deputy assessor. We do not find this to be the case.

The county assessor's duties to assess property and collect taxes are a function of statute and not the state constitution. Article 11, section 12 of the Washington Constitution permits the Legislature to vest local authorities with the power to assess and collect taxes for public purposes. Article 11, section 12 provides:

The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

The Legislature has implemented this authority to delegate tax duties to localities through the statutes establishing the assessor's duties (RCW 84.40 and 84.41) as well as those defining the board of equalization's duties (RCW 84.48). The Legislature's choice to assign statutory duties to more than one local body or officer does not create an unconstitutional delegation. The role of the two authorities is more properly analyzed as a potential statutory conflict rather than a constitutional problem. In examining statutes addressing the same subject matter, every reasonable effort must be made to harmonize and give effect to all the provisions. Dolman v. Labor & Indus., 105 Wn.2d 560, 564-65, 716 P.2d 852 (1986); Tommy P. v. Board of Cy. Comm'rs, 97 Wn.2d 385, 391, 645 P.2d 697 (1982).

Full effect can be given the statutory duties of both assessors and boards of equalization because they perform different functions. The assessor values the property within the county and certifies the roll. RCW 84.40.030. The board of equalization engages in a separate review function. While the board is authorized to equalize property on its own motion, it is bound by the valuation method used by the assessor, which is

presumed to be correct pursuant to RCW 84.40.0301. RCW 84.48.010. Rather than usurping the duties of the assessor, the board of equalization provides a complementary review function. AGO 1986 No. 3 analogizes the role of the board of equalization to that of a superior court reviewing the action of an administrative agency.

By analogy, we would compare the review of an assessor's work conducted, first by the Board of Equalization and then by the Board of Tax Appeals, with the review of an administrative agency's work performed by a superior court and an appellate court under that standard of review found in the Administrative Procedure Act[.]

AGO 1986 No. 3, at 9. The board, as a reviewing body, conducts an inquiry into the actions of the assessor, but is constrained by certain limitations, including the presumption of validity extended to the assessor's work. Therefore, we conclude that by reviewing the assessor's work the board of equalization does not unconstitutionally usurp any of the assessor's duties.

### **Question 2:**

If the answer to Question 1 is yes, then must the board of equalization equalize property values to the current year's fair market value or to the fair market value of the assessor's revaluation year?

As your inquiries assume, in a county using a four-year cyclical revaluation process, many properties will not have new valuations in a given assessment year. We have concluded, in answer to your first question, that the board of equalization has the authority to review all property on the assessment roll pursuant to RCW 84.48.010. You next ask whether this qualification process should look to the value established by the assessor in the last revaluation process or to the current market value of property.

The county board of equalization is a creature of statute and has only those powers and authorities specifically provided or necessarily implied by statute. Northwestern Imp. Co. v. McNeil, 100 Wash. 22, 30-31, 170 P. 338 (1918); cf. State ex rel. Taylor v. Superior Ct., 2 Wn.2d 575, 579, 98 P.2d 985 (1940). The governing sections of RCW 84.48.010 require the board of equalization to equalize the properties so that each property shall be entered "on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, which is presumed to be correct pursuant to RCW 84.40.0301". For properties that have not been revalued during the current assessment year, the "measure of value used by the county assessor" is the last revaluation. This value is used in subsequent assessment years until the next cyclical revaluation. Therefore, while the board of equalization has the ability to review all properties for a given assessment year, the board must equalize to the fair market value of the assessor's revaluation year.

This conclusion is dictated not only by the statutory language defining the board of equalization's powers, but also by the requirement for uniformity in taxation contained in article 7, section 1 of the Washington Constitution:

The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.

As discussed above, the cyclical revaluation process has been authorized by statute and upheld in court decisions against uniformity and equal protection attacks. To be valid, however, the cyclical process must be systematic. The law will countenance some degree of disparity at a given point in time between the valuation of taxpayers' properties within the same jurisdiction if all owners are equally subject to the benefits and burdens of a cyclical system. If any part of the real property taxation system is allowed to deviate from the systematic nature of the cyclical process, the constitutional foundation of the cyclical system would be undermined. This is demonstrated by Dore, 79 Wn.2d 755, where the court struck down tax assessments by the King County Assessor because they were not sufficiently systematic. To allow equalization of some properties, "out of cycle" to current true and fair value would, in effect, create the same disproportions in the cycle that invalidated the cyclical program in Dore.

The United States Supreme Court likewise has addressed the issue of regularity in assessment systems in Allegheny Pittsburgh Coal Co. v. Webster Cty., 488 U.S. 336, 102 L. Ed. 2d 688, 109 S. Ct. 633 (1989). The taxpayers in Allegheny owned real property suitable for coal mining. The Webster County Assessor had a practice of assessing recently sold properties at current market value and making only minor adjustments to properties that were not sold. This practice had resulted in assessment and tax rates that were approximately 8 to 35 times higher on recently sold properties than those applied to comparable neighboring properties that had not been recently sold. The practice was challenged as a violation of uniformity and equal protection. The United States Supreme Court agreed with the taxpayers that they had been denied equal protection because the assessor's actions were not designed to result in equalizing the burden on comparable properties over time. In condemning this system, the court indicated what elements a proper reappraisal system would contain:

As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. . . . In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.

Allegheny, at 343 (citations omitted). Both assessors and boards of equalization are bound by constitutional doctrines requiring uniformity and equal protection. These doctrines are satisfied in a cyclical process only by strict adherence to a system that allows equality in treatment over a reasonably limited period of time. If the board of equalization was allowed, under the guise of reviewing or correcting assessor action, to arbitrarily disrupt the timing of the cyclical process by randomly updating values to current market, its action would likely be found to violate the constitutional requirements for uniformity in taxation and equal protection under the authorities we have cited. Therefore, while the board has the power to review assessed values for a given year, in doing so it must measure the assessed value against the last value established by the assessor under the cyclical revaluation process.

**Question 3:**

If the answer to Question 1 is no, must the board of equalization or a petitioner seek equalized property values as of the current year's fair market value or the fair market value as of the assessor's revaluation year?

Our responses to Questions 1 and 2 render an answer to Question 3 unnecessary.

**Question 4:**

Is it a constitutional violation of equal protection to allow one county to revalue property every four years and another county to revalue every year?

The statute governing revaluation, RCW 84.41.030, provides for variation in the length of revaluation cycles:

Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county at least once each four years and physical inspection of all taxable real property within the county at least once each six years.

(Emphasis supplied.) By requiring revaluation "at least" every four years, more frequent valuation intervals are clearly contemplated. A two-year revaluation cycle is specifically authorized by RCW 84.41.041: "The department may approve a plan that provides that all property in the county be revalued every two years." Specific methods to accomplish annual revaluation through statistical updating are set forth in RCW 84.41.041:

If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.

Since one-, two-, and four-year revaluation cycles are affirmatively authorized by state statute, your question would require an opinion as to the constitutionality of these statutes. Pursuant to long-standing policy, this office declines answering questions about the constitutionality of state statutes, as these matters are properly decided by the courts. A sound practical reason for this policy is that the duty or responsibility of appearing in court to defend the constitutionality of a statute will ordinarily fall upon this office. AGO 65-66 No. 96, at 7.

We trust this will assist you.

Very truly yours,

KENNETH O. EIKENBERRY  
Attorney General

PHYLLIS K. MACLEOD  
Assistant Attorney General

KOE:PKM:aj  
Enclosures

[1]The assessor is authorized to place new construction or alteration on the assessment rolls up to August 31 of each year. The assessed value of such property is considered as of July 31 of that year. RCW 36.21.080.

[2]The Washington State Department of Revenue, Improving Property Tax Administration in Washington State, { 2-3 (1992), indicates that currently 13 counties are on annual revaluation cycles, three are on two-year cycles and one is on a three-year cycle. The remaining 22 counties use a four-year cycle.

[3]Attached as Appendix A.

[4]Attached as Appendix B.